HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
And
HON'BLE SHRI JUSTICE G.V.SEETHAPATHY

W.P. NO.378 OF 2001

Between:
Sri P.Gattaiah

..... Petitioner

AND

Singareni Collieries Company Limited
Rep by its Chairman & Managing Director,
Kothagudem and 3 others.

.....Respondents

::JUDGMENT::

Counsel for the Petitioner : Sri G.Vidya Sagar

Counsel for Respondents : Ms.Uma Devi for Sri

K.Srinivasa Murthy

Dated 4/7/2006

Per Sri G.S.Singhvi, CJ

This is a petition for quashing proceedings No. DYCG/ Admn/8/1377 dated 23.12.2000 issued by respondent No.4, whereby the petitioner was informed that he would be retired from service on 30.9.2002.

The Facts:

After passing 8th Class from CSI High School, Bellampally, Adilabad District, the petitioner joined the service of Singareni Collieries Company Limited (for short 'the Company') as Boring Mazdoor on 2-9-1962. In the identity and service card (hereinafter referred to as 'the service card') prepared by the management of the company, his age was recorded as 20 years. In 1968, he is said to have come to know about the age recorded in the service card and represented to the competent authority of the Company that his correct date of birth, as recorded in the Transfer Certificate dated 17.6.1961 issued by CSI High School, Bellampally, is 12.1.1945. After verification of the school certificate, the competent authority entered the petitioner's date of birth in the service card as 12-1-1945. He also gave a written undertaking on 25-9-1968 that he shall abide by the recorded date of birth i.e., 12-1-1945. In 1973, the petitioner was posted as Acting Drilling Mukkadam Category-IV. In 1974, he was promoted as Junior Driller. In June, 1977, he was promoted as officiating Assistant Driller and was confirmed on that post with effect from 1.1.1978. In 1979, he was promoted as Driller Grade-B and finally as Driller Grade-A. Vide letter dated 29-8-2000/2-9-2000, GM:BPA (P) directed Deputy Chief Geologist/BPA to require the petitioner and another employee, namely, G.A. Franklin (Driller) to appear before the Age Determination Committee. The addressee was also directed to send 'B' Register and other relevant documents for being submitted before the Committee. Another communication dated 21/22-9-2000 was sent by GM: BPA requiring the petitioner's presence before the Age Determination

Committee on 23-9-2000. Later on, he was made to appear before the Medical Officer who, after examining the teeth and eyes of the petitioner, opined that his age appears to be between 45 to 50 years. After sometime, Deputy Chief Geologist, Exploration Division of the Company issued letter dated
23-12-2000 and informed the petitioner that his age has been confirmed as 20 years as on 2-9-1962 and consequential changes made in his service book, 'B' Register and all other relevant record. By another letter of the same date, the same officer declared that in terms of clause 4 of the Age Retirement Rules of the Company, the petitioner will be retiring after duty hours on 30-9-2002.

The petitioner challenged the decision of the concerned authority to effect changes in his service book etc. by contending that the same is contrary to Singareni Collieries Retirement Rules, 1959. He pleaded that his recorded date of birth is 12-1-1945 and, therefore, he cannot be retired with effect from 30-9-2002. In paragraphs 3 and 8 to 11 of his affidavit, the petitioner averred as under:

> "3. It is submitted that at the time of joining the respondent company, the management did not require me to produce any certificate in support of my age. In 1968, I came to know that my age was not correctly recorded in accordance with my date of birth. Therefore, I made a representation along with transfer certificate issued by the CSI High School, Bellampally dated
> 17-6-1961 wherein my date of birth is 12-1-1945. On verification of the school certificate, the respondent authorities have recorded my date of birth as 12-1-1945 and an undertaken was taken from me on 25-9-1968 that my date of birth is
> 12-1-1945 and I abide by the said declaration. Accordingly, my date of birth is recorded in the Service Register and other registers of the company as 12-1-1945.
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> 8. It is submitted that the Singareni Collieries Company have prescribed age retirement rules known as "Singareni Collieries Company Age Retirement Rules" which came into force vide Circular No.P/34/39/1684 of 7th to 11th August, 1959 w.e.f.
> 3-8-1959. The said rules have been modified in pursuance of the instructions of the National Coal Committee-IV (JBCCI-IV) and

communicated to the Singareni Collieries Company vide circular No.CIL/NCWA/III/II No. 76/88-185 dated 25-8-1988. The said circular instructions of the JBCCI-IV dated 25-4-1988 have been adopted by the Singareni Collieries Company and a circular No.P.49/4702/IR/1270 dated 1-8-88 was issued to implement the JBCCI-IV instructions dated 25-4-1988. Thus, the JBCCI-IV instructions are to be followed by the Singareni Collieries Company for the purpose of determination/verification of the age of employees. As per Annexure-I of the said circular dated 25-4-1988 prescribes the procedure for determination of age at the time of appointment. Clause (A)(ii) details with employees who are non-matriculates but educated, the relevant rule read as follows:

"(ii) Non-matriculates but education:

In the case of appointees who have pursued studies in a recognized educational institution, the date of birth recorded in the School Leaving Certificate, shall be treated as correct date of birth and the same will not be altered under any circumstances."

9. It is submitted that as per clause (5) of the Circular dated 25-4-1988 the undisputed cases will not be reopened and a copy of the print out will be communicated to the employees concerned. Since there is no dispute with regard to the date of birth as entered by the company dated 25-12-1968 there is no dispute with regard to the date of birth entry in the service register. It is submitted that as per circular dated 1-8-88 only when there is variation in the date recorded in the records as such as Form 'B' register, the CMPF register and Identity Cards (untampered) only will be referred to Age Determination Committee / Medical Board and only in such cases the company will consider the evidence available and is required to assess the age in accordance with the Medical jurisprudence and indicate the accurate age assessed. In my case, there is no variation in the age recorded in the company registers inasmuch as in the identity cards (untampered, CMPF records, Form 'B' register and service register my age is recorded as 12-1-1945 on the basis of the School Leaving Certificate of a recognized school in accordance with the JBCCI instructions. Hence, referring my case to the Age Determination Committee in the year 2000 is wholly misconceived and illegal.

10. It is submitted that my age has been recorded in accordance with clause A (ii) of Annexure-I of the instructions dated 25-4-1988. Clause B (i) of the instructions have no bearing inasmuch as the review / determination of the date of birth does not arise at this

length of service. The company having failed to record the date of birth in accordance with the Transfer School Leaving Certificate issued by a recognized institution and having noticed the said action on the part of the respondent officials after obtaining an undertaking from me on 25-5-1968 that my age was recorded as 12-1-1945 in accordance with the School Leaving Certificate issued by a recognized educational institution. After 32 years of service, it is not open to the respondents to review or verify my date of birth without any basis. Thus, the impugned action on the part of the respondents in referring my case to the Age Determination Committee is wholly misconceived and contrary to the circular instructions issued by the JBCCI and the respondent company.

11. It is submitted that subsequent to joining the company, I have appeared as a private candidate for the 10th Class in the year 1973 and in the said certificate also my date of birth was recorded as 12-1-1945 in conformity with the entries made in the School Leaving Certificate of CSI High School, Bellampalli. On the basis of the educational qualifications only I have been promoted to the higher post. Thus, for the last 32 years the company has recognized and approved my date of birth as
12-1-1945. Since there is variation in the records of the company referring my case for review/determination of age is wholly misconceived and entire procedure adopted by the respondents is wholly illegal and without any power."

In the counter affidavit filed by Sri Jaganmohan, Deputy Chief Geologist, Exploration Division of the respondent Company, it has been averred that at the time of entry in service on 2.9.1962, the petitioner's age was shown as 20 years and that in terms of the policy decision taken by the management of the company in consultation with the employees union, his case was referred to the Age Determination Committee, and necessary correction was made as per the recommendations of the Committee. Sri Jaganmohan further averred that the decision of the Company to retire the petitioner with effect from 30.9.2002 is in consonance with the policy framed by the management from time to time in terms of the agreement entered with the employees union. For the sake of convenient reference, the averments contained in paragraphs 6, 7 and 8 of the affidavit of Sri

Jaganmohan are reproduced below:

> "6. Upon a reading of the entire affidavit and the material papers filed by the petitioner, it is very clear that the petitioner had joined the services of the Company in the year 1962. At the time of entry in the Company, the Service Record, his age was shown as 20 years as on 2-9-1962. Under the column, "Educational Qualifications", it was shown that he had studied 8th class and there is no mention that he has produced the School Leaving Certificate at the time of appointment, as laid down in the said Circular dated 01-08-1988. According to the petitioner, if his date of birth is 12-1-1945, as per the School Leaving Certificate, as stated by him in the affidavit, he should have produced the same which he has not done so, leaving alone he would have been a minor at the time of appointment. Rather, the petitioner has obtained the School Leaving Certificate, dated 30-4-1973 and evidently, this certificate has been obtained after nearly 10 years after his joining in the services of the Company. I submit that in the same Service Register, apart from the age mentioned as 20 years as on 2-9-1962, the age as mentioned in the Transfer Certificate was also entered creating thereby a discrepancy in the age of the petitioner. So far as the question relates to the date of birth and the claim made by the petitioner, it cannot be accepted on his own showing. If the petitioner's statement is accepted, he would have been below the age and as such he could not have been appointed and he should have been disqualified as he is below 18 years of age which is required for appointment and as per Section 45 of Mines Act, 1952, the persons below 18 years of age are prohibited and shall not be allowed to work in mines and its ancillary units.
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> 7. In this regard, in the said circular dated 25-4-1988, there is a provision under Item-B with regard to the Review/Determination of the date of birth in respect of existing employees. Item No. (B) provides for "REVIEW/DETERMINA-TION OF DATE OF BIRTH IN RESPECT OF EXISTING EMPLOYEES". In case of existing employees like the petitioner, under Item No.B(i)(a) the Matriculation Certificate or Higher Secondary Certificate issued by the recognized universities or Board or Middle Pass Certificate issued by the Board of Education or Department of Public Instructions and Admit Cards issued by the aforesaid Bodies will be treated as correct provided they were issued by the said Universities/Boards/ Institutions prior to the date of employment. In this regard, the petitioner is definitely an existing employee and this

rule position definitely attracts to his case, but the certificate produced by him is neither a Matriculation or Higher School Certificate or Middle Pass Certificate issued by the Board of Education or Department of Public Institution and hence, the question of accepting the Transfer Certificate does not arise, leave alone, these certificates should have been issued prior to the date of appointment, which is not so in the present case, such transfer certificate was issued after the date of the employment of the petitioner. Again, under Item (C), it has been mentioned that where there is a variation of the age recorded in the records mentioned above, the matter will be referred to the Age Determination Committee/Medical Board constituted by the Management for determination of age. The case of the petitioner is such that there is a variation in the service records and definitely it requires that the matter be examined by the Age Determination Committee. Thus, the allegation made in the writ petition that there is no dispute with regard to the date of birth is not correct, as can be amply seen from his service record, that too, the rule position mentioned in para-8 is not applicable to the petitioner as the rule is applicable only at the time of appointment and not for existing employees. Since there is a variation in the age, as mentioned in the service card and in the other documents, as per the provision made out under Category-(B), it is definitely a case to be referred to the Age Determination Committee. The question of Age Determination Committee reviewing the age of the petitioner can take place at any time during the service tenure of the employee when it comes to light that there is a discrepancy with regard to the age mentioned in the service records and hence, the review of the age is necessary by the Age Determination Committee.

8. I submit that the petitioner was put to notice regarding the discrepancy of the age and he was requested to appear before the Age Determination Committee. The petitioner by his letter dated 5-9-2000 requested for time to obtain the Transfer Certificate from the school. Thus, the petitioner has acknowledged that there is discrepancy in the age for which the Age Determination Committee will have to look into. When the matter was under examination by the Age Determination Committee, the petitioner has taken time for producing the Transfer Certificate. He has suddenly rushed to this Hon'ble Court questioning the action of the respondent Company in reviewing his age at this stage. This particular conduct of the petitioner is one of self-contradictory. It appears that he is not interested to appear before the Age Determination Committee as

per the relevant records and has invented a story that he had taken the Transfer Certificate before his appointment in the Company and the relevant School Record will be submitted within 10 days. This itself shows that the petitioner had never produced the Transfer Certificate which, according to him, he has obtained from the School Authorities at the time of appointment, leave alone, the Transfer Certificate itself is dated in the year 1973 whereas the petitioner has joined in the respondent Company in the year 1962. Thus, the Transfer Certificate has no semblance of acceptance to the Age Determination Committee which was looking into the matter wanted a clarification from the Corporate Office of the respondent Company by its proceedings dated 29-10-2000 regarding acceptance of the Transfer Certificate as equivalent to Middle Pass Certificate so as to examine the petitioner's case in the light of the Circular dated 1-8-1988. it is at this stage, the petitioner has rushed to this Hon'ble Court when the matter is already under examination by the Age Determination Committee."

Sri G.Vidya Sagar, learned counsel for the petitioner relied on the often sighted judgment of the Supreme Court in **State of Orissa vs. Miss. (Dr.) Bina Pani Dei**[1] and argued that the management of the Company could not have retired the petitioner from service on the basis of an assumed date of birth ignoring the recorded date of birth.

Sri Vidyasagar emphasized that before issuing proceedings dated 23.12.2000 for changing the recorded date of birth of the petitioner, the concerned authority did not give any notice and opportunity of hearing to the petitioner and, therefore, the impugned action is liable to be declared as nullity. He emphasized that failure of the respondents to controvert the averments contained in paragraph (3) of the petitioner's affidavit should be treated as sufficient to nullify the impugned action.

Ms.Uma Devi, learned counsel for respondents argued that the action taken by the management to change the recorded date of birth of the petitioner is in consonance with the policy framed for the purpose of determination of the age of the employees. She laid considerable emphasis on the fact that at the time of entry in the service, the petitioner's age was recorded as 20 years and argued that manipulative entry made in

the service card showing his date of birth as 12.1.1945 should not be made basis for granting relief to the petitioner. She also made a suggestive argument that the entry of date of birth as 12.1.1945 has been fabricated at the instance of the petitioner and, therefore, the Court should not entertain his prayer for being allowed to continue in service after 30-9-2002 moreso because the issue raised in the writ petition requires detailed investigation of facts.

We have thoughtfully considered the respective submissions and carefully perused the pleadings and record produced by the parties and are convinced that the proceedings impugned in the writ petition are liable to be declared as nullity on the ground of gross violation of the basic rule of natural justice i.e., audi alteram partem. In paragraph 3 of the affidavit filed by him, the petitioner categorically averred that in 1968 he produced Transfer Certificate issued by CSI High School, Bellampalli on 17-6-1961, wherein his date of birth is recorded as 12-1-1945 and, after verifying the certificate, the authorities of the Company recorded his date of birth as 12-1-1945 and also took an undertaking from him to abide by the same. This has not been controverted in an otherwise detailed affidavit filed on behalf of the respondents by Sri Jaganmohan, Deputy Chief Geologist of the Company. Rather, an attempt has been made to mislead the Court in believing that the petitioner was instrumental in getting the date of birth recorded as 12-1-1945 and the action taken by issuing proceedings dated 23-12-2000 is intended to rectify the discrepancy which had occurred in the date of birth recorded in the service card and the age recorded at the time of petitioner's entry into service.

In the context of the pleadings of the parties, we repeatedly asked the learned counsel for the respondents, Ms.Uma Devi, to clarify as to why no reply has been given to the petitioner's assertion that he had produced the Transfer Certificate issued by CSI High School, Bellampally in the year 1968 and after verification of the entries contained therein, his date of birth was entered as 12.1.1945 in the service card and an undertaking was taken from him on 25.1.1968 that he would be bound by the said entry, but

learned counsel could not give any satisfactory reply. It is, therefore, reasonable to presume that whatever the petitioner has stated in paragraph 3 of his affidavit is correct. It is, thus, clear that after six years of his entry in service, the concerned authority of the Company had recorded his date of birth in the service card as 12-1-1945 on the basis of Transfer Certificate dated 17-6-1961 issued by CSI High School, Bellampally where the petitioner studied up to 8th Class and there was no occasion for the management of the Company to refer the petitioner's case before the Age Determination Committee by assuming that instructions contained in Circular dated 1-8-1988 are applicable to his case. As a corollary to this, we hold that the proceedings issued by the Deputy Chief Geologist (Exploration Division) on the recommendation made by Age Determination Committee are arbitrary and are liable to be quashed.

We are further of the view that even if the Age Determination Committee could, on the basis of the opinion of the Medical Expert, legitimately form an opinion that the petitioner's age should be treated as 20 years as on 2-9-1962, the recorded date of birth i.e., 12-1-1945 could not have been changed without giving him action oriented notice and opportunity of hearing.

In State **of Orissa v. Miss. (Dr.) Binapani Dei** (supra), the Supreme Court considered the correctness of the view taken by Orissa High Court that Dr.Bina Pani Dei could not have been retired from service on the basis of an assumed date of birth. The facts of that case were that the respondent was retired by the Government of Orissa on the basis of some date of birth determined by a Committee constituted by the Government. The Committee conducted a fact finding enquiry and opined that the date of birth of respondent was other than the one recorded in the service book. The Government accepted the report of the Committee and retired the respondent albeit without giving any notice and opportunity of hearing. The High Court of Orissa held that the retirement of the respondent was nullity because before issuing order of retirement on the basis of assumed date of birth, the respondent had not been given notice

about the proposed change of date of birth. While approving the view of the Orissa High Court, the Supreme Court laid down the following propositions:

> "An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fair play. The deciding authority, it is true, is not in the position of a Judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is, however, under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. For that purpose, the person against whom an enquiry is held must be informed of the case he is called upon to meet, and the evidence in support thereof. The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would, therefore, arise from the very nature of the function intended to be performed: it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case.
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> It is true that some preliminary enquiry was made by Dr.S.Mitra. But the report of that Enquiry Officer was never disclosed to the first respondent. Thereafter the first respondent was required to show cause why April 16, 1907, should not be accepted as the date of birth and without recording any evidence the order was

> passed. We think that such an enquiry and decision were contrary to the basic concept of justice and cannot have any value. It is true that the order is administrative in character, but even an administrative order which involves civil consequences, as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence."

The facts of the present case are substantially similar to that of **Dr.Bina Pani Dei**'s case. Therefore, by applying the ratio of the aforementioned judgment to the case in hand, we hold that the impugned proceedings are vitiated due to violation of rules of natural justice and are liable to be quashed on that account.

The argument of Ms.Uma Devi that in exercise of its power under Article 226 of the Constitution of India, the High Court cannot adjudicate the disputed questions of fact is without merit and is liable to be rejected because, for the purpose of deciding the writ petition, we have not been called upon to determine any issue of fact, much less a disputed question of fact. The petitioner has prayed for quashing the proceedings issued by the Deputy Chief Geologist of the Company for effecting change in his recorded date of birth and consequential retirement with effect from 30-9-2002 and not for determination of his correct date of birth. Therefore, he cannot be non-suited by accepting the objection raised on behalf of the respondents.

In the result, the writ petition is allowed. Proceedings dated 23-12-2002 issued by Deputy Chief Geologist of the Company are declared as illegal and quashed.

The question which remains to be considered is as to what relief should be given to the petitioner. In this context, it is apposite to mention that while issuing "Rule Nisi" on 6-2-2002, the learned Single Judge stayed the operation of the proceedings impugned in the writ petition and WVMP No.2157 of 2002 filed on behalf of the management was dismissed

by the Court on 19-2-2002. As a consequence, the petitioner continued in service up to the date of superannuation determined with reference to his recorded date of birth. Therefore, while quashing the proceedings impugned in the writ petition, we consider it appropriate to declare that the petitioner will be deemed to have lawfully continued in service up to 31-1-2005 and he shall be entitled to get all consequential benefits. Ordered accordingly.

G.S.SINGHVI, CJ

Dt.4.7.2006

G.V.SEETHAPATHY, J

Msv/svs

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[1] AIR 1967 SC 1269